

**JANUARY, 1840.**

---

At the General Assembly of the State of  
Rhode Island and Providence Planta-  
tions, begun and holden by adjournment  
at Providence, within and for said State,  
on the first Monday of January, in the  
year of our Lord one thousand eight  
hundred and forty, and of Independence  
the sixty-fourth.

**P R E S E N T:**

SAMUEL W. KING,	}	<i>SENATORS.</i>
HEZEKIAH BOSWORTH,		
JONATHAN REYNOLDS,		
EZEKIEL FOWLER,		
WILLIAM T. BROWNING,		
OLNEY WHIPPLE,		
HENRY ALDRICH,		

***The Secretary.***

**EXHIBIT 11 (McLean)**

JANUARY, 1840.

REPRESENTATIVES FROM THE SEVERAL TOWNS.

<i>Newport.</i>	<i>West Greenwich</i>
Asher Robbins	Thomas T. Hazard.
Benjamin Hazard	Benjamin R. Hoxie
Henry Y. Cranston	<i>Coventry.</i>
Richard K. Randolph	Elisha Harris
George G. King	Jeremiah McGregor.
George Bowen.	<i>Exeter.</i>
<i>Providence.</i>	Robert Gardner
John H. Clarke	Isaac Greene.
Thomas J. Stead	<i>Middletown.</i>
John Whipple	Benjamin Weaver
Charles Jackson.	William Taggart.
<i>Portsmouth.</i>	<i>Bristol.</i>
John Manchester	Joseph M. Blake
Clarke Chace	Benjamin Hall.
William Almy	<i>Tiverton.</i>
Simcon Coggeshall	Joseph S. Bliven.
<i>Warwick.</i>	George W. Humphreys.
Gideon Spencer	<i>Little Compton.</i>
Thomas R. Holden	Nathaniel Church
Bennet Low	Christopher Brown.
William Rhodes.	<i>Warren.</i>
<i>Westerly.</i>	Simmons Cole
Daniel Babcock, Jr.	Alfred Bosworth.
Welcome A. Hoxie.	<i>Cumberland.</i>
<i>New Shoreham.</i>	Jeremiah Whipple
George G. Sheffield	Waldo Earl.
Archibald Milliken.	<i>Richmond.</i>
<i>North Kingstown.</i>	David Clarke
George T. Nichols.	George S. James.
Joseph Spink	<i>Cranston.</i>
<i>South Kingstown.</i>	Amasa Sprague.
Isaac P. Hazard	Seneca Stone
Elisha R. Potter	<i>Hopkinton.</i>
<i>East Greenwich.</i>	Henry M. Wells.
J. Shippee.	Edward Barber
Jeremiah S. Slocum.	<i>Johnston.</i>
<i>Jamestown.</i>	James F. Simmons
John J. Watson	Abraham C. Atwood.
Robert H. Weedon.	<i>North Providence.</i>
<i>Smithfield.</i>	Stephen Randall, Jr.
Sessions Mowry	Edward S. Wilkinson.
Samuel Clarke.	<i>Barrington.</i>
<i>Scituate.</i>	Jeremiah S. Drown
Elisha Mathewson	James Bowen.
Wilmarth N. Aldrich.	<i>Foster.</i>
<i>Glocester.</i>	Gideon Burgess, Jr.
Charles A. Slocum	<i>Burrillville.</i>
Robert Steere	Amasa Ballou
<i>Charlestown.</i>	Jonathan Lackey.
Joseph Gavitt	
George A. Stanton.	
The Hon. Henry Y. Cranston, Speaker ; George Rivers and Edward H. Hazard, Esq's Clerks.	

JANUARY, 1840.

3

*State of Rhode Island and Providence Plantations. In  
General Assembly, January session, A. D. 1840.*

### AN ACT to regulate the Militia.

*Be it enacted by the General Assembly as follows :—* Act to  
regulate  
the mili-  
tia.

Section 1. The whole militia of this state shall be arranged in one division ; the militia in the counties of Newport and Bristol shall form the first brigade ; the militia in the county of Providence shall form the second brigade ; the militia in the county of Washington shall form the third brigade ; and the militia in the county of Kent shall form the fourth brigade. The brigade in the counties of Newport and Bristol shall consist of three regiments ; the brigade in the county of Providence, of seven regiments ; the brigade in the county of Washington, of three regiments ; and the brigade in the county of Kent, of two regiments.

Sec. 2. The regiments aforesaid shall be constituted as follows ; to wit : the towns of Newport, Portsmouth, Jamestown, and Middletown, shall constitute the first regiment ; the towns of Providence and North Providence, the second regiment ; the towns of Westerly, Charlestown, and Hopkinton, the third regiment ; the towns of Bristol, Warren, and Barrington, the fourth regiment ; the towns of Warwick and East Greenwich, the fifth regiment ; the town of Smithfield, the sixth regiment ; the town of Scituate, the seventh regiment ; the towns of North Kingstown and Exeter, the eighth regiment ; the towns of West Greenwich and Coventry, the ninth regiment ; the towns of Tiverton and Little Compton, the tenth regiment ; the towns of South Kingstown and Richmond, the eleventh regiment ; the towns of Glocester and Burrillville, the twelfth regiment ; the town of Foster, the thirteenth regiment ; the towns of Cranston and Johnston, the fourteenth regiment ; and the town of Cumberland, the fifteenth regiment.

Sec. 3. There shall be four companies of militia in the town of Newport ; six companies in the city of Providence ; three companies in the town of Portsmouth ; four companies in the town of Warwick ; two companies in the town of Westerly ; three companies in the town

JANUARY, 1840.

of North Kingstown; four companies in the town of South Kingstown; two companies in the town of East Greenwich; one company in the town of Jamestown; five companies in the town of Smithfield; four companies in the town of Scituate; three companies in the town of Glocester; two companies in the town of Charlestown; three companies in the town of West Greenwich; five companies in the town of Coventry; three companies in the town of Exeter; two companies in the town of Middletown; two companies in the town of Bristol; three companies in the town of Tiverton; one company in the town of Little Compton; one company in the town of Warren; four companies in the town of Cumberland; two companies in the town of Richmond; three companies in the town of Cranston; three companies in the town of Hopkinton; two companies in the town of Johnston; two companies in the town of North Providence; one company in the town of Barrington; four companies in the town of Foster; and three companies in the town of Burrillville; and the aforesaid division, brigades, regiments, and companies, shall be officered agreeably to the several acts of Congress, and the provisions of this act, and said officers shall be engaged as herein hereafter provided. And the division of companies as now existing in the several towns and in the city of Providence, shall be continued, subject however, to such alterations as their present number or future increase or diminution may, in the opinion of the field officers of the regiments respectively, or any two of them, from time to time render expedient: and the officers aforesaid are hereby authorized to augment or reduce the number of companies in their several regiments accordingly: giving written notice thereof to the secretary of state, within five days thereafter.

Sec. 4. In addition to the persons exempted from the performance of military duty by the act of Congress, there shall also be exempted from the performance of such duty, the following persons, to wit: all persons who have holden the office of governor, or lieutenant governor; all persons who, after the last day of February, A. D. 1796, shall have holden any military commission or commissions, or staff office, with the rank of an officer of the line, for the space of five years succes-

JANUARY, 1840

5

sively, and who have been engaged thereon according to law, and been honorably discharged; also every person who shall have holden any such military commission or commissions, or staff office aforesaid, for a less term of time than five years, and who have been superseded without their consent: *Provided however*, that any person who shall claim an exemption on account of his having holden any commission or commissions or staff office as aforesaid, shall exhibit to the commanding officer of the company within the bounds of which he shall reside, if required by such commanding officer, his original commission, or evidence of his appointment to such staff office as aforesaid, by virtue of which he shall claim such exemption; and the original certificate of his having been engaged thereon; and shall also, if required, leave a copy of each of them with said commanding officer, and which copies said commanding officer shall deliver to his successor in office.

Sec. 5. Persons of the following descriptions, as long as they shall remain of said descriptions, shall be exempted from the performance of military duty, to wit: the members of the senate; the justices and clerks of the supreme judicial court; the justices and clerks of the courts of common pleas; the secretary of state; the attorney general; the general treasurer; the sheriff of each county; one ferryman at each stated ferry, who usually navigates the boat; the keepers of light-houses within this state; all settled or ordained ministers of the gospel; the president, professors, tutors, students, and steward of Brown university; town and city treasurers; town and city clerks; practising physicians; practising surgeons; not including pupils of either; preceptors and ushers of academies and schools; and engine men; and provided that no engine shall have more than twenty men, unless otherwise provided by special enactment; the members of firehook and ladder companies; every member of a chartered independent company, who shall deliver, once for all, a certificate from the commanding officer of said company, that he is a member thereof, and completely equipped according to law and the rules and regulations of said company; and all persons belonging to the society of friends commonly called quakers: *Provided however*, that each member of such so-

JANUARY, 1840.

ciety, who would otherwise be liable to do military duty, shall annually procure a certificate from the clerk of any monthly meeting or any two overseers of said society that he is a member thereof; which certificate he shall exhibit to the commanding officer of the company within whose bounds he shall reside, whenever thereto required, not oftener than once in each year; and every person who shall be conscientiously scrupulous against bearing arms: *Provided however*, that such person shall make oath or affirmation before a justice of some court in this state, that he is conscientiously scrupulous against bearing arms, and obtain the certificate of said justice that he has taken such oath or affirmation; and said certificate shall be presented, in the month of April, to the commanding officer of the company, within whose bounds such conscientiously scrupulous person shall reside: and no friend or quaker, and no conscientiously scrupulous person aforesaid, who shall fail to comply with these provisions, respectively, shall avail himself of the privileges of this section.

Sec. 6. Whenever any member of a chartered independent company shall cease, otherwise than by death or removal out of the state, to be a member thereof, it shall be the duty of the commanding officer of such chartered independent company to give notice thereof forthwith to the commanding officer of the militia company, within whose bounds such member shall reside.

Sec. 7. The officers and non-commissioned officers of the militia shall be as follows, to wit: the governor, for the time being, shall be captain-general and commander-in-chief; and he shall command, except when the militia shall be called into the service of the United States; and he shall be entitled to appoint his own aids, not exceeding four, with the rank of colonel. There shall be one major-general; two aids with the rank of major; one division inspector with the rank of lieutenant-colonel; one adjutant-general with the rank of colonel; one quarter-master-general with the rank of colonel. To each brigade there shall be one brigadier-general; one aid with the rank of captain; one brigade inspector, who is also to serve as brigade-major, with the rank of major; one brigade quarter-master, with the rank of captain; and one judge-advocate. To each

JANUARY, 1840.

7

regiment there shall be one colonel; one lieutenant-colonel; one major; one adjutant; one quarter-master; one paymaster; the adjutant, quarter-master, and paymaster, each with the rank of lieutenant; one surgeon; one surgeon's mate; one chaplain; one sergeant-major; one sergeant-quarter-master; one drum-major; and one fife-major. To each company of infantry, light infantry, and riflemen, there shall be one captain; one lieutenant; one ensign; four sergeants; four corporals; one or more drummers; and one or more fifers; or buglers.— To each company of artillery there shall be one captain; two lieutenants; four sergeants; four corporals; one or more drummers; one or more fifers, or buglers; and three drivers. To each company of cavalry there shall be one captain; two lieutenants; one cornet; four sergeants; four corporals; one saddler; one farrier; and one or more trumpeters: *Provided nevertheless*, that all chartered companies organized before the first day of January, one thousand eight hundred and forty, shall continue to be officered as before that time.

Sec. 8. Whenever the office of major-general, brigadier-general, colonel, lieutenant-colonel, major-commandant, or captain, shall be vacant, or such officer be sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, as the case may be, until the vacancy be supplied; and whenever the office of quarter-master-general shall be vacant, the duties thereof shall be performed by the adjutant-general.

Sec. 9. Whenever a company shall have neither commissioned nor non-commissioned officers, the commanding officer of the regiment to which such company belongs, shall appoint suitable persons of said company, to be non-commissioned officers of the same; and the senior non-commissioned officer of a company without officers shall command the same, except upon parade, and except as provided in the following section.

Sec. 10. Whenever any company shall be first enrolled, or shall, from any cause, be without officers, and when an election of officers shall be ordered for said company, and such company shall neglect or refuse to elect any officer, or when no person elected shall accept, the commanding officer of the regiment to which such

JANUARY, 1840.

company belongs, shall detail some officer of the staff, or of the line of the regiment, to train and discipline said company, until some officer shall be elected, or appointed by the commander-in-chief as provided in the nineteenth section; and such officer, so detailed, shall have the same power and authority, and be subject to the same liabilities, as if he were captain of said company; and he shall keep the records of the company; and all meetings of said company shall be notified as is provided in the fifty-third section.

*Manner of Elections and Appointments to Office.*

Sec. 11. The officers of the line, of the militia, shall be elected as follows, to wit: the major-general, brigadier-generals, field officers of regiments, the adjutant-general, division inspectors, brigade inspectors, and brigade quarter-masters, shall be elected by the general assembly; captains and subalterns of companies, by the written or printed votes of the non-commissioned officers and privates of their respective companies; and all who are liable to be enrolled, shall be legal voters in their respective companies; aids to the commander-in-chief, shall be appointed by the commander-in-chief; aids to the major-general, by the major-general; judge-advocates, by the major-general, with the approval of the commander-in-chief; aids to the brigadier-generals, by the respective brigadier-generals; adjutants, paymasters, quarter-masters, chaplains, surgeons, and surgeon's-mates, of regiments, by the respective colonels.

*Appointment of Non-commissioned Officers.*

Sec. 12. Non-commissioned officers shall be appointed as follows: sergeant-majors, sergeant-quarter-masters, drum-majors, and fife-majors, of regiments, by the commanding officers of their respective regiments; non-commissioned officers of companies, by the captains of their respective companies; who shall forthwith return the names of the same in writing to the commanding officer of the regiment.

Sec. 13. All commissions for officers shall be signed and issued by the commander-in-chief; warrants for



JANUARY, 1840.

9

non-commissioned officers shall be signed and issued by the colonels of the regiments, respectively.

Sec. 14. No idiot, lunatic, common drunkard, vagabond, pauper, nor person convicted of any infamous crime, nor any other than able bodied white male citizens, shall be eligible to any military office; and whenever it shall appear to the commander-in-chief, that any person thus declared ineligible has been elected as commanding or subaltern officer in any company, he shall not commission such person, and shall declare such election null and void, and shall order a new election, or appoint some person to fill the vacancy, as he may judge expedient; and no person shall be eligible to the office of major-general, unless it be one of the acting brigadier-generals; or, if neither of them will accept, then some one who has filled the office of brigadier-general, and been honorably discharged.

Sec. 15. All commissioned officers of the same grade, shall take rank according to the respective dates of their commissions; and when two, or more, of the same grade bear an equal date, their rank shall be determined by lot, to be drawn by them before the commanding officer of the division, brigade, regiment, company or detachment, or the president of a court martial; as the case may be. The day of election or appointment of any officer shall be the date of his commission; and whenever he shall be transferred to another corps or station, of the same grade, the date of his original commission or appointment shall be the date of his commission.

Sec. 16. Whenever any officer shall lose his commission, he shall be entitled to a duplicate commission of the same grade and date, on his affidavit made before a justice of any court in this state, on application to the commander-in-chief.

Sec. 17. Any person elected major-general, shall be forthwith notified of his election by the secretary of state; and shall, within twenty days after such notice, signify to the secretary his acceptance of said office, or shall be considered as having declined.

Sec. 18. Each company shall meet on the first Monday in April in each year, to elect the captain and subaltern officers of said company; and in case of a va-

cancy in either office, it shall be the duty of the colonel or commanding officer of the regiment to which said company belongs, to order a meeting of said company at an early day, to fill said vacancy; and any person elected to either of said offices, shall signify his acceptance of the office to the commanding officer of the regiment, within twenty days of his said election; or he shall be deemed to have refused the appointment. The order of the commanding officer of the regiment for a meeting of the company to fill any vacancy, shall be directed to the highest commissioned or non-commissioned officer in said company; and in case there shall be no commissioned or non-commissioned officer in said company, said order shall be directed to any member of said company, whose power to warn said company shall be valid and lawful; and he shall preside at the election.

Sec. 19. In case any company shall neglect or refuse to elect some person to fill a vacant office, the commander-in-chief shall appoint some suitable person to fill the same, upon being notified by the colonel or commanding officer of the regiment, of such neglect or refusal to elect.

Sec. 20. When a company has been newly enrolled, or, from any cause, is without commissioned officers, the commanding officer of the regiment may order an election of officers for the same.

Sec. 21. All commissions shall be delivered to the major-general, and by him to be delivered, through the proper officers, to the persons for whom they are intended.

Sec. 22. All brigade or field officers to whom commissions shall be sent or delivered, by the major-general, shall signify to him their acceptance or refusal of such office, within thirty days after the receipt of the commission: and in case of refusal, the same shall be communicated to the secretary of state, by the major-general.

Sec. 23. No candidate for election to office in the militia shall treat the electors with ardent spirits, either pending, during, or after said election.

Sec. 24. No officer, non-commissioned officer, or private, shall be arrested on any civil process, while going

JANUARY, 1840.

11

to, returning from, or remaining at any place at which he shall have been ordered to attend, for the election of any military officer, or the performance of any military duty.

*Officers, how Qualified.*

Sec. 25. Each commissioned officer, before he shall enter on the discharge of the duties of his office, shall take and subscribe the following oath and declarations, before some justice of the peace, or other magistrate, or town clerk: on the back of each commission the following form of the oath shall be printed, to wit: "I, do solemnly swear (or affirm) that I will bear true faith and allegiance to the state of Rhode Island and Providence Plantations; that I will support the constitution and laws thereof, and the constitution and laws of the United States; and that I will faithfully and impartially discharge all the duties incumbent upon me as according to my abilities and understanding, according to the laws of this state, and of the United States; so help me God." (Or, "this I promise on the pains and penalties of perjury.") On the back of each commission, the following form of certificate shall be printed, and signed by the person before whom such officer shall be qualified, to wit: "This may certify, that        commissioned within named, appeared before me this day of       , A. D.       , and took and subscribed the oath and declarations prescribed by the laws of this state, and of the United States, before me." Signed, &c.

*Officers, how Discharged.*

Sec. 26. Any officer who shall have holden any commission or commissions in the militia of this state during the term of five years in succession, and faithfully performed the duties of the same, shall be honorably discharged, on his application to the commander-in-chief, and shall, forever after, be exempt from the performance of military duty; and no officer shall be discharged, unless on his own application, or unless in cases hereinafter provided; and any officer who has held a

commission or commissions, as aforesaid, for a less term of time than five years, and who shall be superseded by the election or appointment of another person over him, shall, on application as aforesaid, be honorably discharged, and forever after be exempt from military duty.

Sec. 27. All resignations shall be in writing; and shall be approved of and certified as follows: the resignation of the major-general, shall be made to and approved of by the commander-in-chief: the resignation of a brigadier-general, shall be approved of by the major-general; the resignation of a field officer, shall be approved of by the brigadier-general of the brigade to which such field officer belongs; and the resignation of a captain or subaltern officer, shall be approved of by the commanding officer of the regiment to which such captain or subaltern shall belong. And the major-general, brigadier-general or commanding officer of a regiment who shall approve of any resignation as aforesaid, shall certify the same to the commander-in-chief, who shall have the power to allow or disallow thereof at his discretion. And no officer shall be considered as having resigned his commission, unless the same shall have been approved of and certified as aforesaid, and allowed by the commander-in-chief.

*Discipline, Inspection, Training and Review.*

Sec. 28. The system of discipline and field exercise, from time to time ordered for the army of the United States, shall be the system of discipline and field exercise for the militia of this state.

Sec. 29. Each commanding officer of a company shall order out his company on the third Monday of April annually, at one o'clock in the afternoon, for inspection; and shall inspect, examine, and take an exact account of the equipments of his men, note all delinquencies of appearance, and deficiencies of equipments, and correct his company roll, in order that a thorough inspection may be made, of all the militia in the state; and every commanding officer of a company, shall train and discipline his company on said day, as well as inspect them. All persons now holding commis-

JANUARY, 1840.

13

sions as captains or subaltern officers in the militia, shall exercise the duties of their said office, at the company trainings herein ordered on the third Monday of April next: and at the said company training, after the exercise and drill, the company shall proceed to the election of officers; and return of said election shall be made as herein required. And the same proceedings for the election of officers shall be had on the said third Monday of April in each succeeding year.

Sec. 30. The militia of this state shall in the year one thousand eight hundred and forty, and in every second year thereafter, in the month of September, meet by regiment or battalion, for the purpose of training, disciplining and improving them in martial exercise: the places of regimental and battalion rendezvous shall be appointed by the commandants of the regiments respectively: and the days of the regimental or battalion rendezvous, by the respective brigadiers. In the year one thousand eight hundred and forty-one, and in every second year thereafter, in the month of September, the commissioned officers belonging to each brigade shall be called together for the purpose of disciplining and improving them in martial exercise: the time for calling out said officers shall be designated by the major-general; and the place of meeting shall be designated by the brigadier-general of each brigade; and the officers of said brigade shall be under the immediate command of the brigadier-general when so assembled: *Provided*, that the militia in the town of Jamestown, and that portion of the militia of the town of Portsmouth residing on the island of Prudence, may muster with the regiment to which they belong, or by company in their respective towns, on the same day with their regiment; and in the latter case, the commanding officers of said companies respectively, shall inspect and review their companies, and make return to the commander of the regiment: *Provided also*, that the inhabitants of the town of New Shoreham shall be exempt from all military duty.

Sec. 31. Each brigade and regiment, when in the field, shall take rank according to its number, as in the first and second sections of this act, beginning at the lowest number as highest in rank; and the companies

in each regiment shall form according to the rank of the officers present commanding them; and when distinct corps shall parade, join or do duty together, the senior officer present shall command, without regard to corps.

Sec. 32. Whenever any company destitute of commissioned officers, shall parade with other troops, the commanding officer present shall detail some officer of the regiment to discipline and command them, unless the officer be present, detailed for that purpose according to the provision of the tenth section.

Sec. 33. Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary bounds and limits to his parade, not including any road on which people travel, so as to obstruct the same, or prevent their passing, within which, no spectator shall have a right to pass or enter, without leave from such commanding officer; and the commanding officer of any battalion or company may put under guard any spectator or bystander who shall abuse, molest or strike any one when on parade, or under arms; and every person who shall encroach on the parade ground.

Sec. 34. Brigade-majors and brigade-inspectors shall attend the inspections and reviews of their respective brigades, whether the same be by brigade or regiments; and if by regiments, shall inspect their arms, ammunition, and equipments, superintend their exercises and evolutions, and introduce and enforce the system of discipline required by law and by the orders of the commander-in-chief; and shall make return as provided in the forty-first section.

Sec. 35. No non-commissioned officer or private shall, unnecessarily, or without orders from his superior officer, come on to any place of parade, with his musket, rifle, or pistol, loaded with ball, slugs, or shot, or shall so load the same while on parade, under the penalty provided in such cases in the seventy-second section.

Sec. 36. The ball cartridges required by this act shall be inspected at such place as the commanding officer may appoint.

Sec. 37. No officer, non-commissioned officer, or private, shall be compelled to do military duty on any day appointed for town, city, or ward meetings, or for the election of any civil officer, in the town or city in which

he shall reside, except on the third Monday in April, unless it be in case of invasion, insurrection, riot, or tumult threatened; and no doings of any town, city, or ward meeting, and no election of civil officers, holden on the third Monday in April, shall be valid, or of any legal force.

Sec. 38. Nothing herein contained shall prevent any company from meeting at any time for drill, funeral, or any other voluntary duty, nor to impair the corporate privileges of any chartered company, nor any lawful articles of agreement adopted by any company so far as relates to those who have voluntarily signed the same.

*Rolls, Rosters, and Returns.*

Sec. 39. A fair and correct roll of each company shall be kept by the commanding officer, with the state of the arms and equipments belonging to each man; and said officer shall keep an orderly book for all orders received or issued, and all accounts of all fines, from whom received and when and for what cause.

Sec. 40. All general orders shall be distributed by the adjutant general; all division orders, by one of the aids of the major-general; all brigade orders, by the brigade-major; all regimental orders, by the adjutant; and company orders, by any non-commissioned officer or private, when required by the commanding officer.

Sec. 41. Each commanding officer of a company, shall make a correct return of the state of his company, with the names of all the men belonging to it, together with the true statement of their arms, ammunition, and equipments, to the commanding officer of his regiment, annually, in the month of May. Each commanding officer of a regiment shall make a like return to the commanding officer of his brigade, of the state of his regiment, annually, in the month of September. The brigade-majors and inspectors shall make a like return of the state of their respective brigades, to the adjutant-general, annually, in the month of October. And the adjutant-general shall make duplicate abstracts of the state of the militia; one to be delivered to the commander-in-chief, who shall present the same to the general assembly; and the other shall be transmitted, in the

month of December, to the president of the United States.

Sec. 42. The adjutant-general shall furnish blank forms of rolls and of the various returns that may be required, at the expense of the state; and explain the principles on which they are to be made out; and the roll shall be kept as prescribed.

Sec. 43. The commanding officers of companies raised at large, except independent companies chartered before the first day of January, A. D. 1840, shall, in the month of April, annually, make out a list or lists of the men belonging to their respective companies, and deliver the same to the commanding officers of the regiments, within whose bounds any such men shall reside.

#### *Enrollment.*

Sec. 44. Every able bodied white male citizen, in this state, who is, or who shall be, of the age of eighteen years, and not exceeding the age of forty-five years, excepting persons absolutely exempted by the provisions of this act, and idiots, lunatics, common drunkards, paupers, vagabonds, and persons convicted of any infamous crime, shall be enrolled in the militia, in the companies within whose bounds they shall respectively reside, by the commanding officers of companies. Such enrollments shall be made from time to time, as each citizen shall arrive at the age of eighteen years, or shall come to reside within said bounds; or who, without being exempted, shall cease to be holden to do military duty elsewhere; and the commanding officer of any such company, who shall enroll any such citizen, shall cause such citizen to be notified of his enrollment without delay, by a proper non-commissioned officer of said company, by whom such notice may be proved; and any legal notice or warning by a non-commissioned officer, to attend any training, inspection, or review, or election of officers of said company, shall be a legal notice of enrollment. All non-commissioned officers and privates, discharged from any company raised at large, or members of any such company which shall be disbanded, except in cases otherwise provided by law, shall be enrolled as privates in the standing companies of



JANUARY, 1840.

17

militia, within whose bounds they shall respectively reside; and in all cases of doubt as to age or liability, the person enrolled shall be required to furnish proof: *Provided, however*, that all persons between the ages of thirty years and forty-five years, not otherwise exempted by this act, shall be exempt from the performance of military duty, except in case of invasion, insurrection, riot, or tumult, by keeping themselves constantly armed and equipped according to law, by carrying or sending their arms and equipments, annually on the third Monday in April, to the place of parade of their respective companies for inspection.

Sec. 45. Every keeper of a tavern or boarding house, and every master and mistress of a family, or dwelling-house, shall, upon application of the commanding officer of the company within whose bounds such tavern or house is situated, or on application of any person acting under the direction and authority of such commanding officer, give information of the names of all persons residing in such tavern or house, liable to enrollment, or to do military duty; and if any such keeper, master, or mistress, on such application, shall refuse to give information, or shall give false information, or if any person liable to do military duty shall, on such application, either refuse to give information of his age and name, or shall give false information, he, she, or they, shall be liable to the penalty provided in the seventy-fourth section of this act.

Sec. 46. If any non-commissioned officer or private shall become a pauper, vagabond, or common drunkard, or be convicted of any infamous crime, he shall be forthwith disenrolled from the militia.

Sec. 47. No soldier shall be compelled to do military duty within six months after notice given him of his first enrollment; but he shall be entitled from the time of his enrollment to vote at elections in the company in which he is enrolled.

#### *Equipments.*

Sec. 48. Every citizen, when first enrolled in the militia and legally notified thereof, or within six months thereafter, shall provide himself with a good musket

with a bore sufficient for balls of the eighteenth part of a pound, a sufficient bayonet and belt, two spare flints, a priming wire and brush, and a cartridge box to contain twenty-four cartridges, suited to the bore of his musket, and twelve blank cartridges; or with a good rifle, shot pouch, and powder horn; except when otherwise ordered by the commander-in-chief. The commissioned officers shall be severally provided with a sword or hanger; and all soldiers, after six months from having been notified of their enrollment, shall be constantly provided with the arms, and equipments, as provided by law; and which shall be annually inspected at such company, regimental or brigade inspections as are herein directed to be holden.

Sec. 49. Any person unable to equip himself, may represent to the town council of the town, or board of aldermen of the city, in which he resides such inability; and said council or board of aldermen upon being satisfied of his inability, shall give him a certificate to that effect; which certificate shall exempt him from any fine for want of said equipments; and any poor parent, master, or guardian, may avail himself of the privileges of this section.

Sec. 50. Every parent, master, or guardian, shall arm and equip all minors under his, her, or their care, respectively, except as provided in the forty-ninth section, liable to do military duty; and every parent, master, or guardian, who shall fail to do so, shall be liable to the penalties provided in the seventy-first section for deficiency in arms and equipments.

Sec. 51. Every officer, non-commissioned officer, and private, shall hold his uniform, arms, ammunition, and equipments, free from all suits, distresses, executions, or sales for debt or taxes.

Sec. 52. Every officer of the line, and every staff officer, shall provide himself with an uniform complete, which shall be such as the commander-in-chief shall prescribe, and subject to such limitations, restrictions, and limits, and alterations as he may order; and every such officer who shall be deficient therein, shall be liable to the penalty provided in the seventy-first section.

#### *Notifications.*

Sec. 53. Whenever any commanding officer of a com-

JANUARY, 1840.

19

pany shall order out his company for inspection of arms, company training, or inspection and review, he shall issue his orders to some one or more of the non-commissioned officers or privates of his company, to notify the men enrolled in said company to meet at the time and place appointed; and such non-commissioned officers or privates shall notify all the persons enrolled in said company to meet at the time and place appointed, and for the purpose specified in the orders aforesaid; under the penalty for neglecting to warn, provided in the seventy-second section.

Sec. 54. No notice shall be legal, except given verbally or by written or printed warrant to the person to be notified, or by a printed or written warrant left at his usual place of abode, by the person authorized to notify by the commanding officer, and signed by the warning officer; and no such notice shall be legal, if for a company training, inspection and review, unless given at least four days previous to the time appointed for the same; nor for an election of officers, unless given at least ten days before the day of such election: *Provided*, that, in case of invasion, insurrection, riot, or tumult, or any unforeseen and sudden occasion, any verbal, written, or printed notice, from a proper officer or person authorized to notify, shall be legal, however short.

Sec. 55. The adjutant-general shall furnish commanding officers of companies with blank forms of orders to non-commissioned officers and privates to notify, and blank notifications to be left with the men.

Sec. 56. The commanding officer of each company shall record, in the orderly book, all company orders and notifications; but the record shall not be necessary to the recovery of any penalty.

*Calling out the Militia in case of Invasion, Insurrection, Riot, or Tumult.*

Sec. 57. Whenever any invasion of the state, or any insurrection, riot, or tumult shall be made in any part of the state, the commander-in-chief shall call out the militia, or any part thereof, as he may deem expedient or necessary, to suppress or repel the same; and he may order out the division or any brigade, brigades, regi-

ments, regiment, companies, or company, or any portions of the same, or cause any number of men to be detached or drafted from them, and cause officers to be detailed which, with those attached to the troops, shall be sufficient to organize the forces; and if such invasion or insurrection, or any imminent danger thereof, be so sudden in any part of the state, that the commander-in-chief cannot be informed, and his orders received and executed in season to suppress or repel the same, the major-general may order out the division, or any part thereof, as the commander-in-chief might do; and when any troops are in the field for such purposes, the senior officer of said troops, present, shall command, until the commander-in-chief, or some officer detailed by him, shall appear to take the command.

Sec. 58. Whenever any draft from the militia shall be ordered, the non-commissioned officers and privates, except so many as shall voluntarily offer to serve, shall be drafted by lot, from the company; and the officers detailed from the roster.

Sec. 59. If any company without officers be ordered to march, or any draft or detachment therefrom ordered, the commanding officer of the regiment to which such company belongs, shall detail some officer to command them, who shall have the same authority to command them to appear, and to command them in the field, and to make any draft or detachment therefrom, as though he were captain of said company, and shall have the same responsibility.

Sec. 60. Every officer who, when ordered to march to the place of rendezvous, shall unnecessarily neglect to do so, or who shall otherwise disobey any lawful order, shall be punished as is provided in the seventy-third section; and every soldier ordered out, drafted, or detached, who shall not appear at the time and place appointed, armed and equipped as the law directs, or who shall not have some able-bodied substitute, so armed and equipped, at such time and place, or shall not pay to the captain of his company, within twenty-four hours from such time, the sum of one hundred dollars for the benefit of the company, shall be fined not exceeding one hundred dollars; and each non-commission-

JANUARY, 1840.

21

ed officer and private shall take with him provisions for at least three days, when so ordered.

Sec. 61. When, in any county in this state, there shall be any tumult, riot, mob, or any body of men acting together, with intent to commit felony, to offer violence to persons or property, or in any other way to resist the laws of the state by force and arms, or by violence, or when any of said acts shall be threatened, and the fact be made to appear to the commander-in-chief, or to the sheriff of said county, or to either of the justices of the court of common pleas in such county, or, if in the city of Providence, to the mayor of said city in the first instance, or in his absence, to the board of aldermen, the commander-in-chief shall issue his order, or such justice, sheriff, mayor, or board of aldermen shall issue his or their precept, properly signed, directing the commanding officer of the division, brigade, regiment, or company, as the case may be, to order out his command, or any part of the same, to suppress such riot, tumult, or mob, and to prevent the perpetration of any such felony, or act of unlawful violence.

Sec. 62. The officer to whom any such order or precept shall be directed, as named in the foregoing section, shall forthwith order out the troops therein required, to parade at the time and place appointed; and if he shall refuse to obey such order or precept, or if any officer under his command shall refuse to obey an order issued under such order or precept, he shall be cashiered, and farther punishable by fine, as provided in the seventy-third section, and be liable to imprisonment, on the sentence of a court martial approved by the commander-in-chief, for a term not exceeding six months.— And any non-commissioned officer or private, who shall neglect or refuse to appear at the time and place of parade, or to obey any lawful order issued in such case, shall suffer the penalty provided in the sixtieth section.

#### *Excuses.*

Sec. 63. Any excuse for non-appearance of a non-commissioned officer or private, shall be made to the commanding officer of his company, within twenty days after the training or other military duty, for the non-

performance of which he shall claim to be excused, and if the delinquent shall produce satisfactory evidence to the commanding officer, that he was unable to appear at the time and place appointed, the commanding officer may excuse him; but no commanding officer shall receive any excuse for non-appearance after the expiration of said twenty days; and any commanding officer who shall violate this provision, shall be liable to be tried by court-martial.

Sec. 64. Any officer detailed to train and discipline a company without officers, shall have the power, as commanding officer, to excuse absences as aforesaid, and to impose fines.

#### *Disorderly Conduct.*

Sec. 65. Any non-commissioned officer or private who shall, while under arms or on duty, behave himself with contempt to an officer, or who shall conduct in a disorderly manner, join in, or excite any riot or tumult, or appear in any fantastical dress, or with other arms and accoutrements than what the law requires, or who shall be guilty of any other unsoldier-like conduct, shall be put under guard by the officer commanding the field, or by his order, for a time not exceeding the time the troops shall be under arms; and shall be fined, as provided in the seventy-second section.

#### *Surgeons and Surgeon's Mates.*

Sec. 66. No surgeon, or surgeon's mate, nor any physician, shall take any gratuity whatsoever from any person, for a certificate for inability to perform military duty on account of bodily infirmity; and it shall be the duty of such to examine critically the cases of all applicants for such certificates, and not to grant any certificate for bodily infirmity or inability, unless such infirmity or inability be, beyond all doubt, such as to render the applicant unable to perform military duty; and any surgeon, surgeon's mate, or physician who shall violate the provisions of this section, shall be liable to the penalty of fifty dollars; to be sued for and recovered by the colonel or commanding officer of the regiment to which

such surgeon or surgeon's mate shall belong, and within whose bounds such physician shall reside; and said penalty shall be to the use of the regiment, and said certificate shall be of no avail.

Sec. 67. Whenever any regiment may be without a surgeon or surgeon's mate, or when any person may claim to be exempt from military duty by reason of bodily infirmity or disability, and shall not reside within ten miles of the surgeon, or surgeon's mate of the regiment, within the bounds of which he shall reside, any respectable physician within said distance, may grant him a certificate, subject to the restrictions contained in the preceding section; and the commanding officer of any company is authorized to exempt any person from military duty, who shall reside within the bounds of his company, on the presentation of such certificate from the surgeon, or surgeon's mate, or a physician as aforesaid, either for a longer or shorter period, not exceeding one year, as, in the judgment of the commanding officer, the case may demand.

#### *Volunteer Companies.*

Sec. 68. If any company raised at large after the first day of January, A. D. 1840, shall, at any time, be destitute of commissioned officers, and shall, after having been twice ordered, refuse or neglect to fill vacancies, or if the number of privates in any such company be reduced to less than twenty-four, and continue thus reduced for more than one year, said company may be disbanded by the commander-in-chief, and the non-commissioned officers and soldiers thereof be enrolled in the militia: *Provided however*, that no person who has served seven years in any chartered volunteer company in this state, shall ever afterwards be liable to do military duty except in case of invasion, insurrection, or riot.

Sec. 69. Officers of disbanded companies shall not be reduced to the ranks; but may be honorably discharged by the commander-in-chief, or detailed as occasion may demand, for the discharge of any duty correspondent with their rank.

*Fines and Penalties.*

Sec. 70. Every non-commissioned officer and private, holden to do duty in the militia in this state and refusing or neglecting to appear for the performance of duty when legally warned and notified, shall forfeit and pay as follows, to wit: for unnecessarily neglecting to appear at any inspection and review, seven dollars. For unnecessarily neglecting to appear at any company training, five dollars. For unnecessarily neglecting to appear when ordered, or disobeying any lawful order, in case of riot, mob, or tumult, one hundred dollars.

Sec. 71. Every non-commissioned officer and private, who shall appear at any inspection, training, or review, whose equipments are deficient, or of bad quality, shall forfeit and pay, for a musket, a bayonet or belt, and an iron or steel ramrod, all or either, one dollar. A cartridge box with twelve blank cartridges, two spare flints, and a priming wire and brush, all or either, one dollar. The officers of every grade, for a deficiency of uniform, or uniform of bad quality, five dollars. A deficiency of a sword or hanger, or belt, of good quality, both, or either, two dollars.

Sec. 72. Any non-commissioned officer or private, guilty of contempt of any officer, or of disorderly conduct, or other offence described in the sixty-fifth section, not less than fifty, nor more than one hundred dollars. For quitting his guard, section, or platoon, without leave, ten dollars. For discharging his musket, rifle, or pistol, when going to, remaining on, or returning from parade, not less than five, nor more than ten dollars. For refusing or neglecting to warn, when ordered in a company without officers, two hundred dollars.—For refusing or neglecting to give notice or warning in a company without officers, as provided in the fifty-third section, two hundred dollars. For loading arms on parade, with balls, slugs, or shot, not less than five dollars, nor more than twenty dollars.

Sec. 73. Officers shall be liable to the following penalties, to wit: For exercising any power or authority in the militia, after having accepted an appointment in the army of the United States, not more than three hundred dollars. For disobeying any order or precept



JANUARY, 1840.

25

in time of riot, mob, or tumult, not less than one hundred dollars, nor more than five hundred, and to be cashiered and liable to imprisonment. The manner in which fines shall be inflicted on officers, as well as other penalties, shall be by courts-martial, according to law.

Sec. 74. When information is required by persons ordered to enrollment, every person liable to do duty, refusing to give information of his name or age, or giving false information, shall forfeit and pay twenty dollars. Every keeper of a tavern, or boarding-house, and every parent, master, or mistress of a family, refusing to give information, or giving false information, twenty dollars. Persons intruding on the bounds and limits of parades, ten dollars.

*Prosecutions for Fines.*

Sec. 75. For all penalties incurred under the provisions of the seventieth and seventy-first sections, the commanding officer, within ten days after any inspection, training, review, election, or duty, at which the delinquent failed to appear, or appeared deficient in arms and equipments, or with arms and equipments of bad quality, the commanding officer of the company to which said delinquent belongs shall cause him to be notified, in writing, of the penalties incurred by him; and if such delinquent shall fail to excuse himself to the satisfaction of the commanding officer, within ten days after such notice given, then the commanding officer may issue his warrant for said penalty or penalties, and put the same into the hands of the sheriff, his deputy, or any town sergeant or constable in the town or county in which such delinquent resides, who are hereby required to execute the same.

Sec. 76. Whenever the commanding officer of a company shall impose a fine, the person so fined, if he claims to be exempt from military duty at the time for which he is fined, may, within ten days after notice given him, appeal to the commanding officer of the regiment; and in all cases of appeal, it shall be the duty of the officer to whom the appeal is made, to cause written notice to be given to the officer imposing the fine, who shall thereupon stay proceedings for the collection thereof, until

the appeal be determined. And the officer to whom the appeal is made, may, on hearing the parties, abate the fine; and if such fine be not abated, the officer imposing the same, shall proceed to the collection thereof. And the person fined, may be heard by himself or his counsel, both on the original action, and on the appeal. And all appeals shall be made in writing, and notice thereof given to the officer imposing the fine, within twenty days after such appeal is made; and no action shall be sustained against any officer for imposing a fine under the provisions of the seventy-first section.

Sec. 77. All warrants granted for the collection of fines according to the provisions of the preceding sections, shall be directed to the sheriff, his deputy, or any town sergeant or constable of the county or town in which the delinquent dwells; which warrant may be levied on the goods or chattels of said delinquent, if of the age of twenty-one years, and for want of such goods and chattels, on the body of said delinquent; and if such delinquent be under the age of twenty-one years, then on the goods and chattels of his parent, master or guardian, and for want of such goods or chattels, on the body of the same; and him commit, till such fine be paid, with lawful fees for warrant and service, as in execution for debt.

Sec. 78. All fines collected from non-commissioned officers and privates, shall be appropriated to the benefit of the company to which the delinquent or delinquents shall belong, for the purpose of procuring music, and defraying other necessary expenses: *Provided however*, that any person may sue for and recover a fine for firing a musket, rifle, or pistol, either going to, or returning from parade, one half said fine to the prosecutor, and the other half to the company aforesaid.

Sec. 79. All military fines whatever, except those named in the preceding section, and those imposed by court martial, may be sued for and recovered in an action of debt in any court in this state competent to try the same; and when collected shall be paid to the general treasurer.

#### *Courts Martial.*

Sec. 80. General, field, commission, and staff officers,

JANUARY, 1840.

27

shall be subject to trial by court martial, according to the usage and practice of war, for disobedience of orders, unofficer-like conduct while on duty, or during any day appropriated to military exercise, inspection or review, and for neglect of any duty imposed upon them, by law, as officers of the militia; which court martial shall consist of not less than nine, nor more than thirteen members; and the senior officer, who shall always be of a rank superior to that of the officer on trial, shall preside. The court martial for the trial of an officer under the grade of a field officer, shall be appointed by the commanding officer of the brigade to which he belongs; for the trial of an officer of the grade of field officer, by the commanding officer of the division; and for the trial of a general officer, by the commander-in-chief. In every court martial there shall be a judge-advocate, who shall discharge the duties of that office according to the usage and practice of courts-martial; and no other person shall be admitted to prosecute or defend an arrested officer. Whenever a court martial shall be ordered, the order shall designate the time and place of holding the same, the name of the officer to preside, and the names and ranks of the other officers, of which the court is to be composed. If the court shall be ordered by the commander-in-chief, the orders shall be as follows, to wit:

*State of Rhode Island, ss.*

#### GENERAL ORDERS.

"A general court-martial is ordered to assemble at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ for the trial of such persons as may be brought before them, to consist of \_\_\_\_\_ members, to be taken from the division, to wit: the major-general, \_\_\_\_\_ brigadier generals, \_\_\_\_\_ colonels, \_\_\_\_\_ lieutenant colonels. Major-general \_\_\_\_\_ will preside. The adjutant of the \_\_\_\_\_ regiment will furnish an orderly sergeant, to attend and execute the orders of the court." [To be signed by the commander-in-chief, or by the adjutant-general by his order.] If a court-martial be ordered by the major-general, the orders shall be as follows, to wit:

JANUARY, 1840.

*State of Rhode Island, ss.*

## DIVISION ORDERS.

A general court-martial of the division will assemble at            on the            day of            A. D.            for the trial of such persons as may be brought before them, to consist of            members, to wit :            brigadier-generals,            colonels,            lieutenant colonels,            majors. Brigadier-general            will preside. The adjutant of the            regiment will furnish an orderly sergeant to attend and execute the orders of the court. [To be signed by the major-general, or by the division inspector, by his order.] If the court be ordered by a brigadier-general, the orders shall be as follows, to wit :

*State of Rhode Island, ss.*

## BRIGADE ORDERS FOR THE BRIGADE OF RHODE ISLAND MILITIA.

A general court martial for the            brigade will assemble at            on the            day of            A. D.            for the trial of such persons as shall be brought before them, to consist of            members, to wit : colonels,            lieutenant-colonels,            majors, captains,            subalterns. Colonel            will preside. The adjutant of            regiment will furnish an orderly sergeant to attend and execute the orders of the court. [To be signed by the brigadier-general, or by the brigade-major, by his order.] For a general court martial, the adjutant-general shall detail and notify all general officers, and apportion the other officers required, to the several brigades they are to be taken from; and give notice thereof to the division-inspector, or brigade-majors, who shall detail and notify said officers, and make return thereof to the adjutant-general. In a division court-martial, the division-inspector, or an aid-de-camp under the direction of the major-general, shall detail and notify the general officers, and apportion the other officers to each brigade, and give notice thereof to the respective brigade-majors, who shall detail and notify the field officers required of their brigades, and make return thereof to the major-general.

For a brigade court martial, the brigade-major shall

JANUARY, 1840.

29

detail and notify the field officers required to serve on said court martial, and apportion the number of captains and subalterns of each regiment, and notify the respective adjutants; and the adjutant of each regiment shall notify them, and make return thereof to the brigade-major; and if the officer to be tried be a general officer, he shall be furnished with a copy of the order for said court, and a copy of the charges in arrest, by the adjutant-general, or by the division inspector, or by a brigade inspector, as the commander-in-chief shall direct, thirty days before the sitting of said court, who shall make return thereof, with the names of the officers composing said court; and the officer to be tried, if under the rank of a field officer, shall be furnished with like copies, twenty days before the sitting of the said court, by a brigade-major, or inspector, or by the adjutant of the regiment to which he belongs, as the officer ordering the court martial shall direct; who shall return the same, and the names of the officers composing the court, to the judge-advocate of the court; and it shall be the duty of the said judge advocate to summon, or cause to be summoned, such witnesses on the part of the state, as may be necessary by subpoena signed by the officer ordering the court, or by the president thereof, or by said judge-advocate; and the accused shall be entitled to like process, to procure the attendance of his witnesses; which process shall be served by the judge-advocate, or by any disinterested person deputed by him. The members to compose the court, shall be detailed according to seniority, in a regular rotation of duty; and all charges in arrest shall be made out in due form, by way of complaint, and signed by the party complaining, and addressed to the officer whose duty it is to order the court, specifying the act or neglect of which the accused is supposed to be guilty, and praying due process, before said officer shall order a court-martial for the trial of the officer accused. The members of the court, before they enter on the trial of any person accused, shall take the following oath, to wit: "You swear [or affirm] that you will truly try and determine, according to the evidence given in court, the matters depending between this state, and the officer [or officers] now to be tried;

that you will not divulge the sentence of the court, until the same has been approved or disapproved pursuant to law; and that you will not at any time, disclose the vote or opinion of any member of this court, unless required to do so in due course of law. So help you God." [Or this you affirm, &c.] And the foregoing oath shall be administered by the judge-advocate; but all other oaths which it may be necessary to administer, during the continuance of the court, may be administered either by him, or any general or field officer.

Sec. 81. There shall be appointed and commissioned by the commander-in-chief, one judge-advocate for each brigade, who shall perform all the duties of that office, in all courts-martial assembled in their respective brigades, who shall take the following oath, to wit:—"You swear [or affirm] that you will not, at any time whatever, disclose the vote or opinion of any member of any court-martial in which you may be called to act, unless required by due course of law, nor divulge the sentence of any such court, till the same has been approved or disapproved according to law; and that you will faithfully and impartially discharge the duty of judge-advocate, according to the best of your abilities, so help you God." And said oath may be administered by a judge of any court in the state, or any justice of the peace in the state; and a certificate thereof shall be made on the commission of the judge-advocate, by the person administering the oath; and the judge-advocate as aforesaid, shall hold his office only during the pleasure of the commander-in-chief. Whenever any judge-advocate, by reason of interest, relationship to any officer to be tried, sickness, or any other cause, cannot act in any court-martial to be assembled, the officer ordering the court, may designate the judge-advocate of any other brigade, and order his attendance at said court, to officiate as judge-advocate.

Sec. 82. If, on trial, the accused shall object to any one, or more members of the court, he shall state the ground of his objections, and if it appear to the court sufficient, the member or members objected to, shall leave their seats; and if the number remaining be less than nine, the court shall be adjourned for a reasonable time, that the officer ordering the court may detail oth-

ers to supply the place or places vacated by such member or members. And no court martial shall order any other punishment than a fine not exceeding five hundred dollars, or a reprimand, either or both; or a fine not exceeding two hundred dollars, or imprisonment not exceeding six months, or cashiering, either, or all three; and no sentence, as aforesaid, shall be carried into effect, unless passed by the concurrent votes of two-thirds of the court, and approved by the commander-in-chief. And in case an officer under arrest, shall refuse or neglect to attend a court martial, according to orders and notice given him, he shall, by said court, be sentenced to pay a fine not exceeding two hundred dollars, and be cashiered, with disability of ever after holding any military office in this state; unless he be prevented from attending such court martial by reason of sickness, or some other reasonable cause; in which case the court shall have power to adjourn; and notice thereof shall be given to the arrested officer, by the judge-advocate, at least ten days before the day to which the court shall have been adjourned. And the fines imposed by said courts martial shall be to and for the use of the state, and shall be collected by warrant, under the hand and seal of the president of the court, directed to the sheriff of the county in which the convicted officer shall reside; and the fine, when collected, shall be paid to the general treasurer by the sheriff.— And in all cases in which a fine or costs shall be awarded by a court martial, and the sentence of such court shall be approved by the commander-in-chief, and the president of such court shall die, be discharged, or promoted, without having issued such warrant, for such fine and costs, it shall be the duty of the member of said court next in rank to said president, to issue said warrant.

Sec. 83. If any witness duly summoned shall refuse to obey such summons, he shall be committed to the jail in the county in which he resides, by a warrant from the president of the court, directed to the sheriff, or a deputy-sheriff, of said county, there to be held at his own expense, until he will conform, and give evidence in the case, or until discharged by due course of law.— And all witnesses summoned on the part of the State,

and the judge-advocate, for summoning them shall, for travel and attendance, have the same fees that are allowed in civil causes, to be taxed by the president of the court; expenses shall be paid to the judge-advocate by the state, and when received by him, be paid over to the persons, to whom they are due. And if the sentence of the court be against the accused, and the same shall be approved by the commander-in-chief, the said expenses shall, by warrant under the hand and seal of the president of the court, directed in manner aforesaid, be collected of the delinquent, and paid into the general treasury. And the members of said court shall be allowed nine cents per mile travel to and from the place of holding said court, and one dollar for each day during its sitting; and there shall be allowed to the person in whose house said court shall be held, not exceeding two dollars per day, in full of all expenses for room rent, fuel and lights; and which shall be paid from the state treasury. And the judge-advocate shall be allowed twenty-five cents for each legal page of the copy of the proceedings and records of the court martial, to be taxed and paid in the same manner.

The commander-in-chief shall have power to approve or disapprove all sentences passed by courts-martial, and mitigate or remit any punishment or punishments awarded by them, or any part thereof; and the record of all proceedings and sentences of courts-martial, and of the approval, mitigation or remission, by the commander-in-chief, shall be deposited by the respective judge-advocates, in the office of the secretary of state.

Sec. 84. All acts heretofore passed in relation to the militia of this state, which are inconsistent with the provisions of this act, be and the same are hereby repealed.